Supreme Court, U.S.
FILED

961728 JAN 30 1997

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT

OF

THE UNITED STATES

October Term 1996

IN THE MATTER OF:

ERNEST L. KEATHLEY, JR.
Petitioner. Pro Se

On Petition For Writ Of Certiorari
To The Missouri Supreme Court

PETITION FOR A WRIT OF CERTIORARI

ERNEST L. KEATHLEY, JR.
Petitioner, Pro Se
3795 Greengrass Drive
Florissant, MO 63033
(314) 837-3586

RECEIVED

APR 29 1997

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

I

WHETHER THERE EXISTS A VIABLE FEDERAL QUESTION FOR REVIEW BY THE SUPREME COURT OF THE UNITED STATES.

II

WHETHER THE HEREIN ORDER OF DISBARMENT IS REPUGNANT TO AMENDMENT XIV TO THE UNITED STATES CONSTITUTION, SO AS TO CONSTITUTE A DEPRIVATION OF DUE PROCESS OF LAW BECAUSE --

A)-THIS PETITIONER WAS NEVER SERVED WITH NOTICE OF THE CHARGES AGAINST HIM, AS REQUIRED BY SECTION 484.220, VAMS (VERNON'S ANNOTATED MISSOURI STATUTES);

B)-THIS PETITIONER NEVER RECEIVED A NOTICE OF THE DATE AND TIME ON WHICH ORAL ARGUMENTS WERE TO BE HELD BEFORE THE MISSOURI SUPREME COURT ON THE COMPLAINT AGAINST HIM.

III

WHETHER THIS PETITIONER WAS DENIED EQUAL PROTECTION OF THE LAW BECAUSE THE MISSOURI SUPREME COURT DID NOT ALLOW TO THIS PETITIONER THE SAME EXTENSION OF TIME WITHIN WHICH TO FILE HIS MOTION TO SET ASIDE THE COURT'S DISBARMENT ORDER OR, IN THE ALTERNATIVE, TO REHEAR THAT DISBARMENT ORDER, THAT IS GRANTED TO OTHER PERSONS UNDER THE MISSOURI SUPREME COURT RULES WHEN THE MAIL IS USED AS THE DELIVERY AGENCY OF DOCUMENTS AND IF THE LAST DAY FOR RESPONDING FALLS ON A SATURDAY, SUNDAY, OR A LEGAL HOLIDAY.

IV

WHETHER THE MISSOURI SUPREME COURT, AFTER THE EXERCISE OF LEGISLATIVE POWER IN PROMULGATING AND ADOPTING RULES 4-1.4 AND 4-1.15, PASSED A BILL OF ATTAINDER AGAINST THIS PETITIONER, WHEN THAT COURT THEN EXERCISED JUDICIAL POWER WITH RESPECT TO THE VERY RULES WHICH THAT COURT LEGISLATED INTO EXISTENCE BY IMPOSING "THE ULTIMATE SANCTION" OF DISBARMENT UPON THIS PETITIONER.

V

WHETHER THE HEREIN ORDER OF DISBARMENT DEPRIVES THIS PETITIONER OF HIS PROPERTY INTEREST IN HIS LICENSE TO PRACTICE LAW IN MISSOURI WITHOUT DUE PROCESS OF LAW, BECAUSE:

a) NO VIOLATION OF SECTION 484.190, VAMS, WAS FOUND,

b) THIS PETITIONER WAS NOT FOUND TO HAVE BEEN GUILTY --

i) OF CORRUPT CONDUCT;

ii) OF SOME ATTEMPT TO
SUBORN A WITNESS,
BRIBE A JUROR,
FORGE A DOCUMENT, OR
EMBEZZLE A CLIENTS' PROPERTY;

iii) OF OTHER THINGS ABHORRENT TO HONEST AND FAIR DEALING; AND

iv) AN INTENT TO STEAL WAS NEITHER CHARGED NOR PROVEN.

VI

WHETHER THE EX PARTE CONFERENCE BETWEEN THE COURT APPOINTED MASTER AND THE DISCIPLINARY COUNSEL, CONCERNING THE DRAFTING OF THE MASTER'S REPORT, WHICH RESULTED IN THE MASTER ISSUING THE REPORT DRAFTED BY THE DISCIPLINARY COUN-

SEL --SO DEPRIVED THIS PETITIONER OF A FAIR AND IMPARTIAL REPORT AND DECISION BY THE MASTER, AND SO COMPROMISED AND POISONED THE MASTER'S REQUIRED POSITION OF IMPARTIALITY-- THAT THIS PETITIONER COULD NOT RECEIVE A FAIR AND IMPARTIAL DISPENSATION OF JUSTICE IN THIS MATTER AND WAS THUS DEPRIVED OF DUE PROCESS OF LAW.

VII

WHETHER THE HEREIN ORDER OF DISBARMENT GAVE EX POST FACTO AND RETROACTIVE EFFECT TO MISSOURI SUPREME COURT RULE 1.4, LEGISLATIVELY ADOPTED BY THAT COURT, FROM 14 YEARS TO THREE MONTHS AFTER EACH OF THE COMPLAINED DISPOSITIONS OF GARNISHMENT PROCEEDS.

VIII

WHETHER THE HEREIN ORDER OF DISBARMENT, IMPAIRS THE OBLIGATIONS OF CONTRACTS, BECAUSE THE MISSOURI SUPREME COURT HAS LEGISLATIVELY PROMULGATED AND ADOPTED RULE 5.25(b) AND (c), REQUIRING THAT AN ATTORNEY, WHO HAS BEEN SUSPENDED OR DISBARRED, TERMINATE ALL CONTRACTUAL ATTORNEY-CLIENT

RELATIONS WITH ALL CLIENTS, AND REQUIRING EACH CLIENT TO RETAIN NEW LEGAL REPRESENTATION IRRESPECTIVE OF THE WISHES OF THE CLIENTS.

IX

WHETHER THE HEREIN ORDER OF DISBARMENT VIOLATES THE UNITED STATES CONSTITUTIONAL GUARANTEE OF A "REPUBLICAN FORM OF GOVERNMENT" IN EACH STATE --SINCE THE MEMBERS OF THE MISSOURI SUPREME COURT ARE NOT ELECTED BY THE VOTERS OF MISSOURI BUT ARE CHOSEN BY AN EIGHT MEMBER ELITE ORGANIZATION WITHIN THE STATE, THAT COURT'S PROMULGATION AND ADOPTION OF RULES AFFECTING THE SUBSTANTIVE RIGHTS OF BOTH ATTORNEYS AND THEIR CLIENTS, CONSTITUTES LEGISLATION BY OLIGARCHY-- AND, AS SUCH IS INIMICAL TO A REPUBLICAN FORM OF GOVERNMENT.

A LIST OF ALL PARTIES TO THE PROCEEDING

IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

The Honorable John C. Holstein,
Chief Justice of the Missouri Supreme Court,
Supreme Court Building, P.O. Box 150
Jefferson City, Missouri, 65102,
(314) 751-4144;

The Honorable Ann K. Covington,
Judge of the Missouri Supreme Court,
Supreme Court Building, P.O. Box 150
Jefferson City, Missouri, 65102,
(314) 751-4144;

The Honorable Edward D. Robertson, Jr.
Judge of the Missouri Supreme Court,
Supreme Court Building, P.O. Box 150
Jefferson City, Missouri, 65102,
(573) 751-4144;

The Honorable Duane Benton,
Judge of the Missouri Supreme Court,
Supreme Court Building, P.O. Box 150
Jefferson City, Missouri, 65102,
(573) 751-4144;

The Honorable William Ray Price, Jr.,
Judge of the Missouri Supreme Court,
Supreme Court Building, P.O. Box 150
Jefferson City, Missouri, 65102,
(573) 751-4144;

The Honorable Stephen N. Limbaugh,
Jr.,
Judge of the Missouri Supreme Court,
Supreme Court Building, P.O. Box 150
Jefferson City, Missouri, 65102,
(573) 751-4144;

The Honorable Ronnie L. White,
Judge of the Missouri Supreme Court,
Supreme Court Building, P.O. Box 150
Jefferson City, Missouri, 65102,
(573) 751-4144;

Thomas F. Simon, Clerk
Missouri Supreme Court
Supreme Court Building
P.O. Box 150
Jefferson City, MO 65102

The Honorable Ralph F. Voss
Associate Circuit Judge
Osage County Courthouse
P.O. Box 470

Linn, Missouri
65061
(573) 897-2136;

Sam S. Phillips, Esq.
Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, Missouri
65109,
(573) 635-7400.

TABLE OF CONTENTS

ITEM	Page No.
Questions Presented	i
List of Parties	vii
Table of Contents	ix
Table of Citations	xv
PETITIONER'S REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THIS CASE BY OTHER COURTS OR ADMINISTRATIVE AGENCIES	1

PETITIONER'S STATEMENT OF THE DATE OF THE ENTRY OF THE ORDER SOUGHT TO BE REVIEWED 1

THE DATE OF THE ORDER RESPECTING PETITIONER'S MOTION FOR REHEARING 1

THE STATUTORY PROVISION PETITIONER BELIEVES CONFERS JURISDICTION ON THIS COURT TO REVIEW BY WRIT OF CERTIORARI THE ORDER OF DISBARMENT IN QUESTION 1

THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED 2

THE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED IN THIS CASE 2

PETITIONER'S STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 9

I 9
THERE EXISTS A VIABLE FEDERAL QUESTION FOR REVIEW BY THE SUPREME COURT OF THE UNITED STATES.

II 10
THE HEREIN ORDER OF DISBARMENT IS REPUGNANT TO AMENDMENT XIV TO THE UNITED STATES CONSTITUTION, SO AS TO CONSTITUTE A DEPRIVATION OF DUE PROCESS OF LAW BECAUSE --
A)-THIS PETITIONER WAS NEVER SERVED WITH NOTICE OF THE CHARGES AGAINST HIM, AS REQUIRED BY SECTION 484.220, VAMS (VERNON'S ANNOTATED MISSOURI STATUTES);
B)-THIS PETITIONER NEVER RECEIVED A NOTICE OF THE DATE AND TIME ON WHICH ORAL ARGUMENTS WERE TO BE HELD BEFORE THE MISSOURI SUPREME COURT ON THE COMPLAINT AGAINST HIM.

III 13
THIS PETITIONER WAS DENIED EQUAL PROTECTION OF THE LAW BECAUSE THE MISSOURI SUPREME COURT DID NOT ALLOW TO THIS PETITIONER THE SAME EXTENSION OF TIME WITHIN WHICH TO

FILE HIS MOTION TO SET ASIDE THE COURT'S DISBARMENT ORDER OR, IN THE ALTERNATIVE, TO REHEAR THAT DISBARMENT ORDER, THAT IS GRANTED TO OTHER PERSONS UNDER THE MISSOURI SUPREME COURT RULES WHEN THE MAIL IS USED AS THE DELIVERY AGENCY OF DOCUMENTS AND IF THE LAST DAY FOR RESPONDING FALLS ON A SATURDAY, SUNDAY, OR A LEGAL HOLIDAY.

IV 15

THE MISSOURI SUPREME COURT, AFTER THE EXERCISE OF LEGISLATIVE POWER IN PROMULGATING AND ADOPTING RULES 4-1.4 AND 4-1.15, PASSED A BILL OF ATTAINDER AGAINST THIS PETITIONER WHEN THAT COURT THEN EXERCISED JUDICIAL POWER WITH RESPECT TO THE VERY RULES WHICH THAT COURT LEGISLATED INTO EXISTENCE BY IMPOSING "THE ULTIMATE SANCTION" OF DISBARMENT UPON THIS PETITIONER.

V

THE HEREIN ORDER OF DISBARMENT DEPRIVES THIS PETITIONER OF HIS PROPERTY INTEREST IN HIS LICENSE

TO PRACTICE LAW IN MISSOURI WITHOUT DUE PROCESS OF LAW, BECAUSE:
a) NO VIOLATION OF SECTION 484.190, VAMS, WAS FOUND,
b) THIS PETITIONER WAS NOT FOUND TO HAVE BEEN GUILTY --
i) OF CORRUPT CONDUCT;
ii) OF SOME ATTEMPT TO
SUBORN A WITNESS,
BRIBE A JUROR,
FORGE A DOCUMENT, OR
EMBEZZLE A CLIENTS' PROPERTY;
iii) OF OTHER THINGS ABHORRENT TO HONEST AND FAIR DEALING; AND
iv) AN INTENT TO STEAL WAS NEITHER CHARGED NOR PROVEN.

VI 21

THE EX PARTE CONFERENCE BETWEEN THE COURT APPOINTED MASTER AND THE DISCIPLINARY COUNSEL, CONCERNING THE DRAFTING OF THE MASTER'S REPORT, WHICH RESULTED IN THE MASTER ISSUING THE REPORT DRAFTED BY THE DISCIPLINARY COUNSEL --SO DEPRIVED THIS PETITIONER OF A FAIR AND IMPARTIAL REPORT AND DECISION BY THE MASTER, AND SO COMPROMISED AND POISONED THE MASTER'S REQUIRED POSITION OF IMPARTIALITY-- THAT THIS PETITIONER

COULD NOT RECEIVE A FAIR AND IMPARTIAL DISPENSATION OF JUSTICE IN THIS MATTER AND WAS THUS DEPRIVED OF DUE PROCESS OF LAW.

VII 23
THE HEREIN ORDER OF DISBARMENT GAVE EX POST FACTO AND RETROACTIVE EFFECT TO MISSOURI SUPREME COURT RULE 1.4, LEGISLATIVELY ADOPTED BY THAT COURT, FROM 14 YEARS TO THREE MONTHS AFTER EACH OF THE COMPLAINED DISPOSITIONS OF GARNISHMENT PROCEEDS.

VIII 25
THE HEREIN ORDER OF DISBARMENT, IMPAIRS THE OBLIGATIONS OF CONTRACTS, BECAUSE THE MISSOURI SUPREME COURT HAS LEGISLATIVELY PROMULGATED AND ADOPTED RULE 5.25(b) AND (c), REQUIRING THAT AN ATTORNEY, WHO HAS BEEN SUSPENDED OR DISBARRED, TERMINATE ALL CONTRACTUAL ATTORNEY-CLIENT RELATIONS WITH ALL CLIENTS, AND REQUIRING EACH CLIENT TO RETAIN NEW LEGAL REPRESENTATION IRRESPECTIVE OF THE WISHES OF THE CLIENTS.

IX 27

THE HEREIN ORDER OF DISBARMENT VIOLATES THE UNITED STATES CONSTITUTIONAL GUARANTEE OF A "REPUBLICAN FORM OF GOVERNMENT" IN EACH STATE --SINCE THE MEMBERS OF THE MISSOURI SUPREME COURT ARE NOT ELECTED BY THE VOTERS OF MISSOURI BUT ARE CHOSEN BY AN EIGHT MEMBER ELITE ORGANIZATION WITHIN THE STATE, THAT COURT'S PROMULGATION AND ADOPTION OF RULES AFFECTING THE SUBSTANTIVE RIGHTS OF BOTH ATTORNEYS AND THEIR CLIENTS, CONSTITUTES LEGISLATION BY OLIGARCHY-- AND, AS SUCH IS INIMICAL TO A REPUBLICAN FORM OF GOVERNMENT.

CONCLUSION 29

Section 484.190, VAMS: 19

TABLE OF CITATIONS

ITEM **Page No.**

CASES CITED

Re RUFFALO, 390 U.S. 544,
20 LE2d 117,
88 S.Ct. 1222 (1968) 12

ITEM **Page No.**

WOODY v. STATE, 14
904 S.W.2d 467,
(Mo.App. E.D. 1995)

U.S. v BROWN, 381 US 437, 16
85 S Ct 1707, 14 LE2d 484 (1965)

IN re DOE, 95 F2d 386 20
(2nd CCA, 1938)

CUMMINGS v MISSOURI, 24
4 Wall. 277, 18 LEd 356
(1867)

OCHILTREE, v THE IOWA RR. 26
CONTRACTING CO., 21 WALL. 249
88 U.S. S.Ct. 546 (1874)

DUNCAN v McCALL, 28
139 U.S. 449,
11 S.Ct. 573 (1891)

Constitutional Citations

U.S. Constitution 11
Amendment XIV, Section 1

ITEM	Page No.
U.S. Constitution Amendment XIV, Section 1	11, 13, 23
U.S. Constitution Article I, Section 10, paragraph 1	15, 23, 25
U.S. Constitution, Article IV, Section 4	**27**
Article II, Section 1, **Missouri Constitution**	21, a 34
Article V, Section 5, **Missouri Constitution**	21, a 35
STATUTE CITATIONS	
28 USCA 1257(a)	10
Section 484.220, VAMS	11
Section 484.190, VAMS	19
RULE CITATIONS	
Rule 84.17,	13
Rule 44.01	14, 15

Rules 4-1.4 and 4-1.15, 16

Rules 5.05,
5.07(a), and 5.12 18, a 72

Rule 4-1.4 21, a 56

Rule 4-1.15 21, a 57

**Canon 3 A.(4) of Rule 2
CODE OF JUDICIAL CONDUCT-** 22, a 39

Rule 5.25(b) and (c) 26, a 74

APPENDIX

APPENDIX A a 1
**DISBARMENT ORDER
FILED NOVEMBER 1, 1996**

APPENDIX B a 4
**COVER LETTER FOR
DISBARMENT ORDER
FILED NOVEMBER 1, 1997**

APPENDIX C a 5
**SIGNATURE SIDE OF
REGISTERED MAIL RECEIPT
SIGNED NOVEMBER 8, 1996**

ITEM	Page No.
APPENDIX D ADDRESSEE'S ADDRESS SIDE OF REGISTERED MAIL RECEIPT FILED NOVEMBER 13, 1996	a 7
APPENDIX E MOTION TO SET ASIDE DISBARMENT ORDER FILED NOVEMBER 25, 1996	a 8
APPENDIX F LETTER DENYING MOTION FOR REHEARING FOR BEING OUT OF TIME, FILED NOVEMBER 25, 1996	a 43
APPENDIX G SUMMONS AND INFORMATION AGAINST, AND MAILED TO PETITIONER FILED DECEMBER 19, 1994	a 45
APPENDIX H AMENDED INFORMATION AGAINST PETITIONER FILED NOVEMBER 14, 1995	a 50

ITEM	Page No.
APPENDIX I **Rule 84.17**	a 54
APPENDIX J **Rule 4-1.4**	a 56
APPENDIX K **RULE 4.15**	a 57
APPENDIX L **ARTICLE V,** **SECTION 25(a) and (d),** **MISSOURI CONSTITUTION**	a 66
APPENDIX - M **484.220, VAMS**	a 69
APPENDIX - N **RULE 44.01.**	a 70
APPENDIX O **RULES 5.05,** **5.07(A),** **AND 5.12**	a 72
APPENDIX P RULE 5.25(c)	a 74

PETITIONER'S REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THIS CASE BY OTHER COURTS OR ADMINISTRATIVE AGENCIES

Missouri Supreme Court
Order of November 1, 1996
in Case No. 77584

PETITIONER'S STATEMENT OF THE DATE OF THE ENTRY OF THE ORDER SOUGHT TO BE REVIEWED

November 1, 1996

THE DATE OF THE ORDER RESPECTING PETITION'S MOTION FOR REHEARING

November 25, 1996

THE STATUTORY PROVISION PETITIONER BELIEVES CONFERS JURISDICTION ON THIS COURT TO REVIEW BY WRIT OF CERTIORARI THE ORDER OF DISBARMENT IN QUESTION

28 **USCA** 1257 (a)

THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Petitioner is filing his Petition for this Court's Writ of Certiorari directed to the Supreme Court of the State of Missouri (the highest court in the State of Missouri) with respect to that Court's November 1, 1996 Order disbarring Petitioner from the practice of law in the State of Missouri, because the procedure and substance by which that Order of disbarment was achieved, violates the due process and equal protection provisions of Amendment XIV to, the bill of attainder, ex post facto, and impairment of contract prohibitions in Article I, Section 10, paragraph 1 of, and the republican form of government guarantee in Article IV, Section 4 of, and is therefore repugnant to, the United States Constitution.

THE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED IN THIS CASE

Section 484.220, VAMS (Vernon's Anno-

tated Missouri Statutes):

Section 484.210, VAMS:

Amendment XIV to the United States Constitution;

Article I, Section 10 of the **Missouri Constitution;**

Rule 84.17; (All Rules, unless otherwise stated refer to Missouri Supreme Court Rules.)

Rule 44.01 (a) Computation and **(e) Additional Time After Service by Mail;**

Article I, Section 10, Paragraph 1 of the **U.S. Constitution;**

Article II, Section 1 of the **Missouri Constitution;**

Article V, Section 5 of the **Missouri Constitution;**

Rules 5.05 5.07. and **5.12;**

Section 484.190, VAMS;

Rules 1.4 and 1.15(a) and (b), and Rule 4-1.15 (a);

Canon 3 A.(4) of Rule 2 --CODE OF JUDICIAL CONDUCT-- of THE MISSOURI SUPREME COURT RULES;

Article I, Section 13 of the **MISSOURI CONSTITUTION;**

Rule 5.25(b) and **(c);**

Article IV, Section 4 of the U.S. Constitution.

STATEMENT OF THE CASE

(Unless otherwise stated herein, all references to: "Rules" refer to the Missouri Supreme Court Rules; and "VAMS", to Vernon's Annotated Missouri Statutes.)

Petitioner was never personally served by any officer authorized to serve court writs, nor did Petitioner receive notice of an August 22, 1994 hearing date and had no knowledge of that hearing. At no time subsequent

to that August 22 hearing, was Petitioner personally served with any document containing the charges against him or summoning him to appear before any court, tribunal or before any person.

Sharon Adkins, on a one-third contingent fee contract, retained Petitioner to represent her as her attorney against Charles Gross. Pursuant to that representation, Petitioner obtained a default judgment in favor of Sharon Adkins and against Gross on or about October 31, 1975, in the amount of $3,000, of which she has received more than $2,130.91

Petitioner instituted garnishment proceedings against the salary earnings of Gross from his employer, Monsanto Co. Petitioner began payments of the proceeds of the garnishments, less one-third for attorney fees.

The employment of Charles Gross terminated. Gross was declared bankrupt on or about October 15, 1991, but Sharon Adkins was not listed as a creditor. After Gross's bankruptcy, Petitioner executed on, and the sher-

iff auctioned a motor vehicle owned by Charles Gross, from which, $302 was realized, of which Ms. Adkins received $202.

An information and summons were mailed to this Petitioner on December 19, 1994 (Appendix G).

Two hearings were held before the Master herein, the Honorable Ralph F. Voss --the first on November 17, 1995, in the St. Louis County Courthouse, and the second on December 14, 1996 in the Franklin County Courthouse-- pursuant to the herein Information (Appendix H) and amended information (Appendix I), which alleged that Petitioner failed to keep Sharon Adkins reasonably informed about the status of her case; that he failed to promptly comply with her requests for information; that he failed to forward garnished funds or the appropriate portion of those funds to Sharon Adkins; that he failed to keep the funds which belonged to Sharon Adkins separate from his own funds; that he failed to keep and maintain adequate records of the garnishment proceeds; that he failed to promptly deliver

her portion of the proceeds to her; that during a period from April 1980 and August 1987, he made only one effort to garnish the wages of Gross; and failed to act with reasonable diligence and promptness in representing Ms. Adkins' interest in collecting the judgment (Appendix H). The Informations did not allege any violation of 494.190, VAMS.

In the first hearing, Sharon Adkins testified on cross examination, that between April 28, 1977 and July 12, 1990, she received nine letters covering checks totaling $1,928.91, plus a tenth letter dated October 30, 1992 stating Charles Gross was no longer employed by Monsanto, and an eleventh letter dated June 30, 1994 covering the $202 check as her share of the execution on Gross's automobile after he declared bankruptcy without listing Shirley Adkins as a creditor. Ms. Adkins acknowledged in her testimony that one-third or less was withheld for attorney fee from each payment to her.

The checks covered by letters dated October 22, 1976 through April

10, 1980, were paid out of Petitioner's business account; those under letters of January 5, 1988 through June 12, 1990 were paid by cashier's checks or bank money order drawn against a separate account; the letter of June 30, 1994 covered a check drawn against Petitioner's account immediately after the deposit of the sheriff's check covering the proceeds realized by the execution and auctioning of Gross's vehicle.

The Master and the disciplinary counsel conferred ex parte concerning the Master's report, which was drafted by the disciplinary counsel as evidenced by the Disciplinary Counsel's letter addressed to the Master and dated January 12, 1996 (Appendix E, pp a36-a37).

On January 24, 1996, this Petitioner filed his motion for dismissal of the complaint against him and for recusal of the Master (Appendix E, pp a37-a40).

Petitioner never received any notice of a scheduled date for oral arguments in this case, and was not

aware that oral arguments were held before the Missouri Supreme Court in this matter.

The Missouri Supreme Court, on November 1, 1996, issued its Order disbarring Petitioner (Appendix A).

Although the order of disbarment was dated November 1, 1996 and was mailed by registered mail, return receipt requested to Petitioner, Petitioner did not receive the disbarment order until November 8, 1996 (Appendix C), and, when, on November 25, 1996 (the fifteenth day from the date on which Petitioner received notice of said disbarment order having fallen on a Saturday) Petitioner filed his motion to set aside the Court's disbarment order or, in the alternative, for a hearing on that disbarment order (Appendix E), which motion was denied for being out of time (Appendix F).

REASONS FOR GRANTING THE WRIT

I

THERE EXISTS A VIABLE FEDERAL QUESTION FOR REVIEW BY THE SU-

PREME COURT OF THE UNITED STATES.

Jurisdiction is conferred on this Court by 28 USCA 1257(a), which provides, in part:

> Final judgments or decrees rendered by the highest court of State in which a decision could be had, any be reviewed by the Supreme Court by writ of certiorari . . . where the validity of statute of any State is drawn in question on the ground of its being repugnant to the Constitution . . . or where any . . . right . . . is . . . claimed under the Constitution. . . .

II

THE HEREIN ORDER OF DISBARMENT IS REPUGNANT TO AMENDMENT XIV TO THE UNITED STATES CONSTITUTION, SO AS TO CONSTITUTE A DEPRIVATION OF DUE PROCESS OF LAW BECAUSE --

A)-THIS PETITIONER WAS NEVER SERVED WITH NOTICE OF THE CHARGES AGAINST HIM, AS REQUIRED BY SECTION 484.220, VAMS (VERNON'S ANNOTATED MISSOURI STATUTES);

B)-THIS PETITIONER NEVER RECEIVED A NOTICE OF THE DATE AND TIME ON WHICH ORAL ARGUMENTS WERE TO BE HELD BEFORE THE MISSOURI SUPREME COURT ON THE COMPLAINT AGAINST HIM.

U.S. Constitution Amendment XIV, Section 1, provides, in part, "* * * No state shall . . . deprive any person of life, liberty or property without due process of law. . . .".

The procedures followed and the grounds stated for issuing the order of disbarment, failed to follow and violated basic statutory and constitutional standards and requirements.

Although Section 484.220, VAMS, requires personal service on this Petitioner of the charges against him (Appendix M), Petitioner was never served by such officer or otherwise with notice of the charges against him, nor did Petitioner receive any notice of an August 22, 1994 hearing date, and had no knowledge of that hearing.

This Court further stated in **Re**

RUFFALO, 390 U.S. 544, 550-551, 20 LE2d 117, 122, 88 S.Ct. 1222 (1968):

> Disbarment, designed to protect the public, is a ***punishment*** or penalty imposed on the lawyer. He is accordingly entitled to procedural due process, which includes fair notice of the charge. * * * Therefore, one of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether the state procedure from want of notice or opportunity to be heard was wanting in due process." (Emphasis added)
>
> * * * Such procedural violation of due process would never pass muster in any normal civil or criminal litigation.

This Petitioner was never served with a copy of the charges against him. This lack of notice, which in **RUFFALO**, supra, "would never pass muster in any normal civil or criminal litigation", deprived Petitioner of his license to practice law in

Missouri without due process of law.

III

THIS PETITIONER WAS DENIED EQUAL PROTECTION OF THE LAW BECAUSE THE MISSOURI SUPREME COURT DID NOT ALLOW TO THIS PETITIONER THE SAME EXTENSION OF TIME WITHIN WHICH TO FILE HIS MOTION TO SET ASIDE THE COURT'S DISBARMENT ORDER OR, IN THE ALTERNATIVE, TO REHEAR THAT DISBARMENT ORDER, THAT IS GRANTED TO OTHER PERSONS UNDER THE MISSOURI SUPREME COURT RULES WHEN THE MAIL IS USED AS THE DELIVERY AGENCY OF DOCUMENTS AND IF THE LAST DAY FOR RESPONDING FALLS ON A SATURDAY, SUNDAY, OR A LEGAL HOLIDAY.

U.S. Constitution Amendment XIV, Section 1, provides, in part, "* * * No state shall . . . deny to any person within its jurisdiction the equal protection of the law.".

Petitioner's motion for rehearing, under Rule 84.17 (Appendix I), was permitted within 15 days after the Missouri Supreme Court's opinion was filed, although no opinion, only

an order was mailed to this Petitioner. Rule 44.01(a) and (e) (Appendix N) provides in (a) that when counting a period of days, the first day is not counted, but the last day is counted unless the last day of the period is a Saturday, Sunday or a legal holiday, then the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. If the period is less than seven days, intermediate Saturdays, Sundays and legal holidays are excluded from the computation; and provides in (e) that if a document is mailed, three days are added to the period. Rule 44.01 does not except Court opinions or orders which are mailed as was the herein Order.

Fifteen days after November 8 was Saturday, November 23. The next available day was Monday, November 25, 1996, the day on which Petitioner's motion for rehearing was filed.

In the recent case of **WOODY v. STATE,** 904 S.W.2d 467, (Mo.App. E.D. 1995), the Court stated at p. 469:

The 180-day period of § 217.460

> begins to run only when both the prosecutor and the court receive a defendant's request for disposition. . . .

Denial of Petitioner's motion for rehearing for being out of time denies him the time extension equal to that allowed under Rule 44.01 to recipients or other mailed documents.

IV

THE MISSOURI SUPREME COURT, AFTER THE EXERCISE OF LEGISLATIVE POWER IN PROMULGATING AND ADOPTING RULES 4-1.4 AND 4-1.15, PASSED A BILL OF ATTAINDER AGAINST THIS PETITIONER WHEN THAT COURT THEN EXERCISED JUDICIAL POWER WITH RESPECT TO THE VERY RULES WHICH THAT COURT LEGISLATED INTO EXISTENCE BY IMPOSING "THE ULTIMATE SANCTION" OF DISBARMENT UPON THIS PETITIONER.

United States Constitution Article I, Section 10, paragraph 1, provides, in part, "No state shall. . . pass any bill of attainder. . . ."

The purpose of the Constitutional prohibition against bills of attainder is to preserve the basic doctrine that states must maintain a separation of the legislative, executive and judicial powers of government.

That Constitutional prohibition was violated by the Missouri Supreme Court, when, that Court --after exercising legislative power in promulgating and adopting Rules 4-1.4 and 4-1.15, then exercised judicial power in finding that Petitioner had violated the very Rules which that Court legislated into existence, and then imposed the ultimate sanction, the pain and penalty of disbarment upon this Petitioner-- passed a Bill of Attainder against this Petitioner. This Court, discussing attainders in **U.S. v BROWN**, 381 US 437, 85 S Ct 1707, 14 LE2d 484 (1965), stated at US 442-443 and S Ct 1711-1712:

> [5] . . . the Bill of Attainder Clause was intended . . . as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function. . . .

> [6] The Constitution divides the National Government into three branches --Legislative, Executive and Judicial. This "separation of powers" was obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a ***bulwark against tyranny***. (Emphasis added)

And at US 446 and S Ct 1713:

> [8] By banning bills of attainder, the Framers of the Constitution sought to guard against such dangers by limiting legislatures to the task of rule-making. It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments.

In other words, the branch of government which legislates the substantive duties which must be observed by any segment of the populace, may not im-

pose the pains and penalties for an alleged violation of any of those duties.

Not only is there a unity of the legislative and judicial powers in the Missouri Supreme Court, with respect to attorney discipline, that unity of power also includes the exercise of executive power. The chief disciplinary counsel, who investigates and prosecutes allegations of professional misconduct, is the creature of, and is appointed by the Missouri Supreme Court. Rules 5.05, 5.07(a), and 5.12 (Appendix O) providing a unity of the legislative, executive and judicial powers of government in that Court.

V

THE HEREIN ORDER OF DISBARMENT DEPRIVES THIS PETITIONER OF HIS PROPERTY INTEREST IN HIS LICENSE TO PRACTICE LAW IN MISSOURI WITHOUT DUE PROCESS OF LAW, BECAUSE:

a) NO VIOLATION OF SECTION 484.190, VAMS, WAS FOUND,

b) THIS PETITIONER WAS NOT FOUND TO HAVE BEEN GUILTY --

i) OF CORRUPT CONDUCT;
ii) OF SOME ATTEMPT TO SUBORN A WITNESS, BRIBE A JUROR, FORGE A DOCUMENT, OR EMBEZZLE A CLIENTS' PROPERTY;
iii) OF OTHER THINGS ABHORRENT TO HONEST AND FAIR DEALING; AND
iv) AN INTENT TO STEAL WAS NEITHER CHARGED NOR PROVEN.

The Missouri General Assembly, Missouri's legislative branch of government, set out the following grounds for the disbarment or suspension of attorneys from the practice of law in Section 484.190, VAMS:

> Any attorney or counselor at law may be removed or suspended from practice in the courts of this state for any of the following reasons:
>
> (1) If he be convicted of any criminal offense involving moral turpitude;
>
> (2) If he unlawfully retain his client's money or if he is guilty of any malpractice, fraud, deceit

> or misdemeanor whatsoever in his professional capacity;
> * * *

IN re DOE, 95 F2d 386 (2nd CCA, 1938), a case before Judges L. Hand, Swan and Augustus N. Hand, the 2nd Circuit's per curiam opinion, on p. 387, addressed disbarment and stated:

> Disbarment is fitting only when the attorney has been guilty of corrupt conduct; of some attempt to suborn a witness, or to bribe a juror, or to forge a document, or to embezzle clients' property, or other things abhorrent to honest and fair dealing.

Petitioner did use a separate account beginning with January 5, 1988. Sharon Adkins was kept informed of the status of the collections against Gross's assets; Petitioner was diligent in discovering that Gross did not name her as a creditor in his bankruptcy papers; ***no fraud was practiced upon Sharon Adkins;*** her name was never forged on any document; she did not receive any deceptive communication from Petitioner;

she has received all of the sums that were due her; Petitioner never represented any interest contrary to hers. Petitioner did not violate 484.190.

Section 484.190, VAMS, did not state, as grounds for disbursement, any of the grounds alleged in the information and amended information filed by the Chief Disciplinary Counsel, Appendix I). Nor do Rules 4-1.4 and 4-1.15(a)&(b), state any of the substantive grounds for disbarment contained in Section 484.190, supra. The Missouri Supreme Court, in issuing rules setting out additional grounds for disbarment from Section 484.190, VAMS, violated Articles II (Appendix E, pp a34-a35) and V, Section 5 of the Missouri Constitution (Appendix E, p a35).

VI

THE EX PARTE CONFERENCE BETWEEN THE COURT APPOINTED MASTER AND THE DISCIPLINARY COUNSEL, CONCERNING THE DRAFTING OF THE MASTER'S REPORT, WHICH RESULTED IN THE MASTER ISSUING THE REPORT DRAFTED BY THE DISCIPLINARY COUNSEL --SO DEPRIVED THIS PETITIONER

OF A FAIR AND IMPARTIAL REPORT AND DECISION BY THE MASTER, AND SO COMPROMISED AND POISONED THE MASTER'S REQUIRED POSITION OF IMPARTIALITY-- THAT THIS PETITIONER COULD NOT RECEIVE A FAIR AND IMPARTIAL DISPENSATION OF JUSTICE IN THIS MATTER AND WAS THUS DEPRIVED OF DUE PROCESS OF LAW.

There was improper conduct between the Master and the disciplinary counsel per letter to the Master, dated January 12, 1996 (Appendix E, pp a36-a37). They conferred, ex parte, concerning the drafting of the Master's report which was a copy of that drafted by the disciplinary counsel.

Petitioner was not present during, and was not notified of the pendency of said January 3 conversation which was ex parte in nature and thus in violation of Canon 3 A.(4) of Rule 2 --CODE OF JUDICIAL CONDUCT-- of THE MISSOURI SUPREME COURT RULES, which Canon 3 A.(4) (Appendix E, p a39).

By reason of said ex parte conversation, the Master's required po-

sition of impartiality and required avoidance, under Canon 2 of said Rule 2, of the appearance of impropriety was compromised and poisoned, and Petitioner did not receive a fair and impartial dispensation of justice, but was denied due process of law, contrary to Amendment XIV.

VII

THE HEREIN ORDER OF DISBARMENT GAVE EX POST FACTO AND RETROACTIVE EFFECT TO MISSOURI SUPREME COURT RULE 1.4, LEGISLATIVELY ADOPTED BY THAT COURT, FROM 14 YEARS TO THREE MONTHS AFTER EACH OF THE COMPLAINED DISPOSITIONS OF GARNISHMENT PROCEEDS.

U.S. Constitution Article I, Section 10, Paragraph 1 states, in part, "No state shall . . . pass any . . . ex post facto law. . . ."

Imposing sanctions against Petitioner on the grounds he violated Rules 1.4 (Appendix J) and 1.15(a) and (b) (Appendix K), constitute giving ex post facto and retroactive effect to those rules because Rule 1.4 was adopted in August of 1985 and became

effective January 1, 1986, and Rule 1.15 was adopted in March of 1990 and became effective July 1, 1990 (Appendix K, p a65)--from 14 years to three months after all of the garnishments on the earnings of Charles Gross, in violation of prohibition against ex post facto laws.

CUMMINGS v MISSOURI, 4 Wall. 277, 18 LEd 356 (1867), cited in U.S. v Brown, supra, stated in detail, the close relationship between bills of attainder and ex post facto laws, and defined the latter at Wall. 325-326 and LEd 364, as follows:

> By an ***ex post facto*** law is meant one which imposes a punishment for an act which is not punishable at the time it was committed, or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required.
>
> "In **Fletcher v Peck**, 6 Cranch, 137, Mr. Chief Justice Marshall defined an ***ex post facto*** law to

> be one 'which renders an act punishable in a manner in which it was not punishable when it was committed.'"

Thus, the order of disbarment violates and is repugnant to the U.S. Constitutional prohibition against ex post facto laws.

VIII

THE HEREIN ORDER OF DISBARMENT, IMPAIRS THE OBLIGATIONS OF CONTRACTS, BECAUSE THE MISSOURI SUPREME COURT HAS LEGISLATIVELY PROMULGATED AND ADOPTED RULE 5.25(b) AND (c), REQUIRING THAT AN ATTORNEY, WHO HAS BEEN SUSPENDED OR DISBARRED, TERMINATE ALL CONTRACTUAL ATTORNEY-CLIENT RELATIONS WITH ALL CLIENTS, AND REQUIRING EACH CLIENT TO RETAIN NEW LEGAL REPRESENTATION IRRESPECTIVE OF THE WISHES OF THE CLIENTS.

U.S. Constitution Article I, Section 10, Paragraph 1 provides, in part, "No state shall. . .pass any. . . law impairing the obligation of contracts. . . .".

Petitioner has a number of clients who have limited financial means, and Petitioner represents them either on a pro bono basis or at greatly reduced fees; they may not be able to find other representation on such terms.

Rule 5.25 (b), (c) (Appendix P) which requires that an attorney who has been suspended or has been disbarred to terminate all attorney-client relations with all of his or her clients irrespective of the wishes of his clients and require each of his or her clients to retain new legal representation irrespective of the wishes of his or her clients, impairs the contracts and contractual obligations between the attorney and the clients in violation of the Constitutional impairment of contract prohibition.

OCHILTREE, v THE IOWA RR. CONTRACTING CO., 21 WALL. 249 88 U.S. S.Ct. 546 (249), loc. cit. 548, (1874), stated that the Missouri Constitution could not be amended to reduce the liability of stockholders to

bondholders, because

> ". . . the law of the contract forms its obligation, and that legislation which materially impairs the remedy is void. * * *

IX

THE HEREIN ORDER OF DISBARMENT VIOLATES THE UNITED STATES CONSTITUTIONAL GUARANTEE OF A "REPUBLICAN FORM OF GOVERNMENT" IN EACH STATE --SINCE THE MEMBERS OF THE MISSOURI SUPREME COURT ARE NOT ELECTED BY THE VOTERS OF MISSOURI BUT ARE CHOSEN BY AN EIGHT MEMBER ELITE ORGANIZATION WITHIN THE STATE, THAT COURT'S PROMULGATION AND ADOPTION OF RULES AFFECTING THE SUBSTANTIVE RIGHTS OF BOTH ATTORNEYS AND THEIR CLIENTS, CONSTITUTES LEGISLATION BY OLIGARCHY-- AND, AS SUCH IS INIMICAL TO A REPUBLICAN FORM OF GOVERNMENT.

U.S. Constitution Article IV, Section 4 provides, in part, "The United States shall guarantee to every state in the Union a republican form of government. . .".

DUNCAN v McCALL, 139 U.S. 449, p 461, 11 S.Ct. 573, p,577 (1891), defined "a republican form of government" as follows:

> . . . a republican form of government is guaranteed to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves...

In other words, a republican form of government is one in which legislative power is held by representative bodies elected by the people. The voters of Missouri have no voice or choice in the selection of judges on the Missouri Supreme Court. Those judges are selected by a seven member commission selected by the governor, members of the bar, and the Missouri Supreme Court judge, under Article V, Section 25(a) and (d) of the Missouri

Constitution (Appendix L).

The seven Missouri Supreme Court judges who legislated the Supreme Court Rules at issue herein are not representatives of the popular will, but are intentionally insulated from the popular will. Although an excellent way to select a judiciary that is independent of the passions and pressures of the populace, it is a horrible method of selecting a body which exercises legislative power affecting the citizenry.

CONCLUSION

The Missouri Supreme Court Rules, at issue herein, are invalid because through those Rules, the Missouri Supreme Court has: legislated, executed and adjudicated substantive rights contrary to the principle of separation of powers and, to that extent, failed to maintain a republican form of government; imposed a bill of attainder on this Petitioner; gave ex post facto enforcement to its Rules; has impaired the contractual relations between this Petitioner and his clients; and, without due process of

law, has deprived the Petitioner of his property interest in his license to practice law in Missouri.

For the above reasons, this Petitioner respectfully suggests that the Supreme Court should issue its Writ of Certiorari, notifying the Clerk of the Missouri Supreme Court to certify and transmit the record herein to this Court, directing this Petitioner and the Missouri Supreme Court to file their briefs on the issues raised herein, and set this matter for oral arguments, and thereafter issue its decision directing and ordering the Missouri Supreme Court to reinstate Petitioner's license to practice law and award him his costs.

Respectfully submitted,

Ernest L. Keathley, Jr.,
Mo. Bar No. 16644
Petitioner, Pro Se
P.O. Box 963
Florissant, MO 63033
(314) 837-3586
No fax number

APPENDIX

APPENDIX A -- ORDER OF THE SUPREME COURT OF MISSOURI en banc FILED NOVEMBER 1, 1996

Supreme Court of Missouri
en banc

November 1, 1996

In re: ERNEST L. KEATHLEY, JR., Respondent. No. 77584

ORDER

The Chief Disciplinary Counsel filed in this Court an information alleging that Respondent, Ernest L. Keathley, Jr., violated Rule 4-1.4 (a), Rule 4-1.15 (b), and Rule 4-8.1 (b). This Court appointed the Honorable Ralph F. Voss as master. He heard testimony and filed his report finding Respondent Ernest L. Keathley, Jr., violated Rule 4-1.4 and Rule 4-1.15.

Respondent, Ernest L. Keathley, Jr., contends that the conduct complained of predates the adoption of the rules he is alleged to have violated.

The matter having been briefed and argued in this Court, and the Court being fully advised in the premises, the Court finds that Respondent, Ernest L. Keathley, Jr., has violated the portions of this Court's Rule 4 as found by the master, that at the time of the conduct, similar rules were applicable, Rule 4-DR 9-102, and that Respondent, Ernest L. Keathley, Jr., should be disciplined.

NOW, THEREFORE, IT IS ORDERED by this Court that the said Ernest L. Keathley, ' Jr., be and he is hereby disbarred and that his right and license to practice law in the State of Missouri is cancelled.

IT IS FURTHER ORDERED that the said Ernest L. Keathley, Jr., comply in all respects with Rule 5.27 - Notification of Clients and Counsel.

Costs are assessed against Respondent.

Day - to - Day

s/ John C. Holstein

John C. Holstein,
Chief Justice

STATE OF MISSOURI--SCT.

I, THOMAS F. SIMON, Clerk of the Supreme Court of missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 1st day of November, 1996, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, the 1st day of November, 1996.

s/ Thomas Simon, Clerk
s/ Becky J. Judd, D.C.

APPENDIX B -- COVER LETTER FOR DISBARMENT ORDER FROM CLERK OF THE SUPREME COURT FILED NOVEMBER 1, 1997

(Great seal of the State of Missouri)

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI

THOMAS F. SIMON TELEPHONE
CLERK 65102 (573) 751-4144

November 1, 1996

Mr. John E. Howe
3335 American Avenue
Jefferson City, MO
65109

Mr. Ernest L. Keathley, Jr.
P.O. Box 963
Florissant, MO
63033

In re: Ernest Keathley, Jr.
Supreme Court No. 77584

Gentlemen:

This is to advise that the Court this day entered an order in the above entitled cause, a copy of which is herewith attached.

Very truly yours,
s/ Thomas F. Simon
Clerk

APPENDIX C -- SIGNATURE SIDE OF REGISTERED MAIL RECEIPT SIGNED NOVEMBER 8, 1996

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.[] Show to whom delivered, date, and addressee's address.
(Extra charge)

2. [] Restricted Delivery.
(Extra charge)

3. Article addressed to
Ernest L. Keathley, Jr.
P.O. Box 963
Florissant, MO 63033

Seal/ November 8, 1996

Florissant MO 63033 USPS

4. Article Number R 931 181 336
Type of Service. [x] REGISTERED
Always obtain signature of addressee
or agent and DATE DELIVERED.

Signature - Addressee
s/Ernest L. Keathley Jr.

6. Signature -- .Agent

7. Date of Delivery

8. Addressee's Address
(ONLY if requested and fee paid)`

APPENDIX D -- ADDRESSEE'S ADDRESS SIDE OF REGISTERED MAIL RECEIPT FILED NOVEMBER 13, 1996

UNITED STATES w/BJ w/Keathley
POSTAL SERVICE w/77584
OFFICIAL BUSINESS

Seal/US MAIL
PENALTY FOR
PRIVATE
USE $300

SENDER INSTRUCTIONS
Print your name, address and ZIP Code in the space below.

* Complete items 1,2,3, and 4 on the reverse.
* Attach to front of article if space permits.
* Endorse article "Return Receipt Requested adjacent to number

(Date Stamped [Upside Down])

RECEIVED
Nov 13 1996
MISSOURI SUPREME COURT

RETURN TO

OFFICE OF
CLERK OF SUPREME COURT
POST OFFICE BOX 150
JEFFERSON CITY, MO.
65102

APPENDIX E -- TITLE AND INTRODUCTION EXERPTS FROM MOTION TO SET ASIDE DISBARMENT ORDER FILED NOVEMBER 25, 1996

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE: ERNEST KEATHLEY, Respondent.
Supreme Court Case No. 077584

RESPONDENT'S MOTION TO SET ASIDE DISBARMENT ORDER
OR, IN THE ALTERNATIVE, FOR HEARING ON DISBARMENT ORDER

In support of this Motion, the undersigned Respondent Attorney, Ernest L. Keathley, Jr., states as follows:

1. This Court, on November 1, 1996 . . . issued its Order:

stating that on an Information alleging this Respondent had violated Rule 4-1.4(a), Rule 4-1.15(b), and Rule 4-8.1(b);

stating that the Master appointed by this Court found that Respondent

had violated Rules 4-1.4 and 4-1.15;

stating that Respondent contends that the conduct complained of predates the adoption of the rules he is alleged to have violated;

stating that this matter had been briefed and ***argued*** in this Court (Emphasis added);

stating that, after being fully advised in the premises, this Court found Respondent had violated those portions of the Court's Rule 4 as found by the Master;

stating that at the time of the conduct, similar rules were applicable, Rule 4-DR 9-102;

stating that Respondent should be disciplined; and

ordering that Respondent be disbarred and that his right and license to practice law in the State of Missouri is cancelled.

2. Respondent did not receive

said order until November 8, 1996, the first date on which there was a yellow slip in Respondent's Post Office Box, indicating a registered or certified mailing was waiting for Respondent at the Post Office.

3. There was no written opinion of this Court enclosed with said Order in the same or under a separate cover.

4. Respondent never received any notice of a scheduled date for oral arguments in this case, and was not aware that oral arguments were held before this Court in this matter.

5. Earlier, Respondent did not attend the hearing of August 22, 1994 because Respondent did not receive notice of that hearing, and, with respect to that hearing and in response to the Information of December 16, 1994, Respondent filed his motion to dismiss which stated, omitting the title and signature, stated as follows:

> In support of this, his Motion to Dismiss filed here in response to the Information dated December

16, 1994 with document attached thereto, titled "Order Directing Filing of Information In Missouri Supreme Court", and dated August 25, 1994, Respondent Ernest L. Keathley, Jr. states as follow:

1. Said August 25, 1994 document states, in part, as follows:

> This matter was set for hearing at Respondent's request before the Missouri Supreme Court Advisory Committee on August 22, 1994. ***Notices of the hearing were sent to Respondent*** and Disciplinary Counsel. However, Respondent failed to attend the hearing. (Emphasis added.)

2. This Respondent never received any prior notice of a hearing, which may have been scheduled for August 22, 1994 or any other date, and had no knowledge that a hearing had been set for that or any other date, on this matter.

3. This Respondent never received any transcript of the proceedings and has no knowledge of what evidence, if any, was adduced on August 22, 1994 at said hearing.

4. By reason of Respondent not having received notice of said August 22 hearing, Respondent had no knowledge of the pendency of that hearing and was unable to appear at said August 22 hearing and defend himself against the accusations against him, and Respondent was thereby deprived of due process of law and the equal protection of the laws of this State in violation of Amendment XIV to the U.S. Constitution and Section 10 of Article I of the Missouri Constitution (1945) with respect to the property interest he has in his license to practice law in the State of Missouri.

5. By reason of such deprivation of due process and equal protection of law in the failure of the Circuit Bar Committee of

> the 22nd Judicial Circuit to provide Respondent with notice of the August 22 hearing, the findings and recommendations of that Committee should be and are void and of no effect.
>
> WHEREFORE, Respondent moves this Court to order that the herein Committee Order of August 22 and the herein Information against Respondent be dismissed.

6. Rule 4-1.4(a), which, as per this Court's Order of November 1, 1996, Respondent was charged with violating, provides as follows:

> A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

7. Rule 4-1.15(b), which, as per this Court's Order of November 1, 1996, Respondent was charged with violating, provides as follows:

> Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the

> client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

8. Sharon Adkins --who retained Respondent on a one-third contingent fee contract, and, pursuant thereto, Respondent obtained a default judgment against Charles Gross in favor of Sharon Adkins-- testified (T 66-80) that she received the following communications, letters and checks from Respondent:

* * *

9. The Master's report to this Court stated, in part, as follows:

* * *

In all of the above cases cited by the Master, each of the subject respondents was guilty of conduct which was worse, both in quantity and qual-

ity than that of the herein Respondent.

17. The record of garnishments and payments to Sharon Adkins is as follows:
* * *

In addition, Respondent mailed three letters to Sharon Adkins which read as follows:

July 3, 1996

Ms. Sharon Adkins
1634 Belt Avenue
St. Louis, Missouri
63112

Re: Sharon Adkins vs. Charles Gross

Dear Ms. Adkins:

Due to illnesses which have afflicted me since just before last Christmas, until this week, I have been unable to review my records in your case against Charles Gross. Since the last half of March, I have twice been hos-

pitalized for three week periods when I received chemotherapy treatment for acute myelogenous leukemia, and this Friday, July 5 I am to be hospitalized for a spinal tap.

In reviewing those records, I have been unable to find any record that I made any payment to you out of the $160.00 I collected under G-33692, or out of the $50.00 I collected under G-34695, in those garnishments against the wages of Charles Gross. I am going to assume that I did not make any payment to you out of those garnishments. If I did not make any payment to you out of those two garnishments, that failure was inadvertent and unintentional.

In addition, my review of those records indicate that I mistakenly wrote the amount collected under G-29897 as being $34.98, when the amount collected was actually $25.00 additional --$59.98.

The amounts of those mistakes --$160, $50, and $25-- come to a total of $235.00, and I am accordingly including to you with this letter, my check in the amount of $235.00 (no attorney fee has been deducted from the $235). I regret the errors which resulted in the delays in you receiving your shares of those garnishments and any inconvenience those mistakes may have caused you.

Sincerely yours,

July 8, 1996

Ms. Sharon Adkins
1634 Belt Avenue
St. Louis, Missouri
63112

Re: Sharon Adkins vs. Charles Gross

Dear Ms. Adkins:

With my letter of July 3, I sent

you my check for $235 to pay you the amounts which I apparently and inadvertently failed to pay you earlier. I wanted to get that check to you and in the mail before I went into the hospital on July 5.

In further thinking about that payment, I have come to the conclusion that you should receive interest on those payments. Consequently, I am sending you an additional check to cover that interest, at ten per cent per year, which I have computed as follows (although the $235 check which I sent you last week did not contain a deduction for my one-third attorney fee, the interest will be on the amount which you would have received, which I assume I did not send to you:

Out of the $160.00, which I collected under G-33692 of June 10, 1980, you would have received, after deducting a $50 attorney fee, and, at $11 per year for sixteen years -- **$176**;

Out of the $50.00, which I col-

lected under G-34695 of January 27, 1981, you would have received, after deducting a $16 attorney fee, and at $3.40 per year for fifteen and a half years -- **$52.70.**

In addition, with regard to G-29897 of July 9, 1979, which I mistakenly calculated as being $34.98, when the amount collected was actually $25.00 additional or $59.98, you would have received an additional $17 after deducting an attorney fee of $8.00, and, at $1.70 per year for 17 years -- **$28.90.**

The above amounts --$176.00, $52.70, and $28.90-- total $257.60, and I am enclosing my additional check in the amount of **$257.60.**

Again, I regret the errors which resulted in the delays in you receiving your shares of those garnishments and any inconvenience those mistakes may have caused you.

Sincerely yours,

and

August 30, 1996

Ms. Sharon Adkins
1634 Belt Avenue
St. Louis, Missouri
63112
Re: Sharon Adkins vs. Charles Gross Dear Ms. Adkins:
On July 3, 1996, I sent you my check numbered 2001 in the amount of $235.00, covered by my letter of that date, a duplicate original of which is enclosed, and on July 8, 1996, I sent you my check numbered 2004 in the amount of $257.60, covered by my letter of that date, a duplicate original of which is enclosed, for the reasons stated in my letters of July 3 and 8.

In your recent telephone call to me, you stated that you had not received either of those letters or checks. When I talked to your mother on Belt, she stated to me that those envelopes had not been delivered to her house on Belt. I requested a tracer by the Post Office, which

stated they were unable to find either letter. My inquiry with UMB, against which checks 2001 and 2004 were drawn, revealed that those checks had not been presented for payment.

Consequently, I am sending to you at 1634 Belt --the address which you testified on page 57 of your testimony of November 17, 1995, was your address on Belt-- my check numbered 2025 drawn against UMB in the amount of $492.60, which amount represents the total of checks 2001 and 2004 which I sent to you on this past July 3 and 8 respectively.

Again, if I had not previously, sent you your share of the $235 garnished from the salary of Charles Gross following my receipt of those three garnishments referenced in my letter of July 3 and 8, I regret the errors which resulted in the delays in your receipt of your share of those garnishments and any inconvenience those mistakes may have caused you.

Sincerely yours,,

The checks covered by letters dated 10/22/76 through 04/10/80 were paid out of Respondent's business account;

those under letters of 1/5/88 through 6/12/90 were paid by cashier's checks or bank money order drawn against a separate account; the letter of 6/30/94 covered a check drawn against Respondent's account immediately after the deposit of the sheriff's check covering the proceeds realized by execution and levy on, and auctioning of Charles Gross's motor vehicle.

18. After Respondent's review of the Adkins case, following his recovery from bronchitis and low blood pressure between December 23, 1995 and March 12, 1996 and, on March 15, 1996 a diagnosis of and treatment for acute myelogenous leukemia, Respondent was unable, as stated in the above quoted letters, to find a record of payment of out of the $160.00 collected under G-33692, or out of the $50.00 collected under G-34695, and mistakenly wrote the amount collected under G-29897 as being $34.98, when the amount collected was actually $25.00 additional --$59.98; with the amounts of those mistakes --$160, $50, and $25-- totaling $235.00, which amount, plus

interest was sent to Sharon Adkins at 1634 Belt, the first two checks being lost in the mail, but a subsequent mailing on August 30, 1996, by certified mail, return receipt requested found its way to her.

19. Although this Respondent erred in delaying some of the payments to Sharon Adkins, and erred in passing the earlier and last garnishment checks through his general business account, Respondent did use a separate account beginning with January 5, 1988, Sharon Adkins was kept informed of the status of the collections against Gross's assets, Respondent was diligent in discovering that Gross did not name her as a creditor in his bankruptcy papers, no fraud was practiced upon Sharon Adkins, her name was never forged on any document, she did not receive any deceptive communication from Respondent, all of the sums that were due to her were paid to her, Respondent never represented any interest contrary to hers; the only instruction of hers which Respondent failed to follow was in her letter (Ex 10) stating:

Q. And Exhibit 10, a copy of the

letter sent to me. Is this a copy of the letter which you sent to me?
A. Yes, it is.

Q. And you wrote that in your handwriting?
A. Yes, it is.

Q. And it shows your return address as being 1634 Belt?
A. Yes.

Q. But you were not living there at that time, were you?
A. No, I wasn't.

Q. And in this letter, did you write:

> "I feel that it would be to my advantage and yours" -- this is on the second page -- "if you pay me the remaining balance plus accumulated interest from your personal account which in turn you can garnish Mr. Gross' check to collect your money."

Did you write that in there?
A. Yes, I did.

Q. And in that letter did you want

me to, as I understand it, to send you the rest of the money which had not been -- the rest of the judgment that had not been garnished?

A. Would you rephrase that?

Q. Okay. Was it your intention -- let me show you the letter again. Was it your intention that you wanted me to send you the rest of the judgment which had not previously been collected by garnishment and to pay you that out of my ***personal account***? (Emphasis added)

A. Yes. (T 78-79)

20. It is true that disbarment is the ultimate sanction (**IN re SCHAEFFER**, 824 S.W.2d 1 (Mo. banc 1992), **IN re FENLON**, 775 S.W.2d 134 (Mo. banc 1989), and **IN re MENDELL**, 693 S.W.2d 76 (Mo. banc 1985)), and being the ultimate sanction, that sanction should be reserved for cases of fraud, deceit, forgery, representing conflicting interests against a client, and engaging in criminal activity --the spirit of Section 484.290, VAMS, which, in listing the substantive grounds on which an attorney may be disbarred, states:

484.190. Powers to Suspend or Remove

Any attorney or counselor at law may be removed or suspended from practice in the courts of this state for any of the following reasons:

(1) If he be convicted of any criminal offense involving moral turpitude;

(2) If he unlawfully retain his client's money or if he is guilty of any malpractice, fraud, deceit or misdemeanor whatsoever in his professional capacity;

(3) If he shall have been removed, suspended or disbarred from the practice of law in any other state or jurisdiction and shall fail to disclose such fact in his application for license to practice law in this state.

21. This Court's order of disbarment of Respondent under this Court's Rules 4-1.4 and 4-1.15, pro-

vide as follows:

Rule 4-1.4

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

and:

Rule 4-1.15

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and

shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the court (sic) of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer

until the dispute is resolved.

(d) Except as provided in paragraph (e), a lawyer or law firm shall establish and maintain one or more interest-bearing insured depository accounts into which shall be deposited all funds of clients or third persons that are nominal in amount or are expected to be held for a short period of time, but only in compliance with the following provisions:

(1) no earnings from such account shall be made available to the lawyer or law firm, and the lawyer or law firm shall have no right or claim to such earnings;

(2) only funds of clients that are nominal in amount or are expected to be held for a short period of time and on which interest is not paid to the clients may be deposited in such account, taking into consideration the following factors:

(i) the amount of interest that the funds would earn during the period they are expected to be

deposited:

(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients;

(3) funds deposited in such account shall be available for withdrawal or transfer on demand, subject only to any notice period that the institution is required to observe by law or regulation;

(4) the depository institution shall be directed by the lawyer or law firm establishing such accounts:

(i) to remit at least quarter-annually earnings from such account, net of any service charges or fees as computed in accordance with the institution's standard

accounting practice, to the Missouri Lawyer Trust Account Foundation, which shall be the sole beneficial owner of the interest or earnings generated by such account; and

(ii) to transmit with each remittance of earnings a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied, with a copy of such statement to such lawyer **or** law firm; and

(5) the lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstances require further action with respect to the funds of any client.

(e) Every lawyer shall certify, in connection with this Court's annual enrollment fee statement and in such form as the clerk of this Court may prescribe, that the lawyer or the law firm with which the lawyer is associated either participates in the program as provided in Rule

1.15(d) or is exempt because the:

(1) Nature of the lawyer's or law firm's practice is such that the lawyer or law firm does not hold client or third party funds or is not required to maintain a trust account; or

(2) lawyer is primarily engaged in the practice of law in another jurisdiction and not regularly engaged in the practice of law in this state;

(3) lawyer is associated in a law firm with at least one lawyer who is admitted to practice in a jurisdiction other than the state of Missouri and the lawyer or law firm maintains a pooled interest-bearing trust account for the deposit of funds of clients or third persons in a financial institution located outside the state of Missouri and the interest, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds or to a nonprofit organization or government agency pursuant to the laws or rules governing

lawyer conduct of the jurisdiction in which the financial institution is located;

(4) lawyer or law firm elects to decline to maintain accounts as described in paragraph (d) in accordance with the procedures set forth in paragraph (f); or

(5) Missouri Lawyer Trust Account Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the program when service charges on the lawyer's or law firm's trust account equals or exceeds any interest generated.

(f) A lawyer or law firm may elect to decline to maintain accounts as described in paragraph (d) for any calendar year by so notifying the Missouri Lawyer Trust Account Foundation in writing on or before January 31 of 1991 and each subsequent year. A lawyer or law firm that does not so advise the Missouri Lawyer Trust Account Foundation within any such period shall be required during the current year to maintain such accounts.

> (g) For purposes of paragraph (d) of this rule:
>
> (1) "insured depository accounts" shall mean government insured accounts at a regulated financial institution on which withdrawals or transfers can be made on demand, subject only to any notice period that the institution is required to observe by law or regulation.
>
> (2) The Missouri Lawyer Trust Account Foundation is that not-for-profit corporation described in this Court's Order of October 23, 1984.
>
> (Amended March 9, 1990, effective July 1, 1990; March 3, 1994, effective July 1, 1994.),

violate Article II, Section 1 of the Missouri Constitution, which states as follows:

> The powers of government shall be divided into three distinct departments --the legislative, executive and judicial-- each of which shall be confided to a separate magistracy, and no person, or collection of persons,

> charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

and Article V, Section 5 thereof, which states, in part, as follows:

> The supreme court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law. ***The rules shall not change substantive rights***, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. * * * (Emphasis added)

in that the adoption and promulgation of Rules 4-1.4 and 4-1.15 by this Court is an exercise of legislative power changing the substantive rights of attorneys with respect to disbarment of attorneys provided for in

Section 474.190, and further that this Court then exercises the judicial power of determining what acts constitute violations of Rules 4-1.4 and 4-1.15 and the sanctions that should be imposed upon an attorney which this Court finds was in violation of the Rules which this Court legislated into existence.

22. Respondent has a number of clients who have limited financial means, and Respondent represents them either on a pro bono basis or at greatly reduced fees; they will not be able to find other representation on such terms, and in all likelihood will be left without legal representation; their rights and interests should be protected by allowing Respondent to continue to engage in the practice of law and to represent them.

23. Respondent wishes to bring to the attention of this Court, misconduct or the appearance of misconduct on the part of the Disciplinary Counsel and the herein Master, in that the Disciplinary Counsel sent Respondent a copy of a letter ad-

dressed to the Master, dated January 12, 1996, which stated:

> RE: Ernest L. Keathley, Jr. Supreme Court Number 77584
> Dear Judge Voss:
>
> Pursuant to my understanding of your directions during our conversation on January 3, 1995 (sic), I have prepared a draft order for your signature. The draft order contemplates denial of Respondent's Request for Additional Hearing.
>
> At your direction, I am also preparing a draft Master's Report in this case. It will be sent to you and Mr. Keathley as soon as it is completed; hopefully within two weeks.
>
> Please call if you have questions or comments. I will then try to arrange a conference call with Mr. Keathley.

24. On January 24, 1996, Respondent filed the following in this matter:

RESPONDENT'S MOTION FOR DISMISSAL OF THE HEREIN COMPLAINT AND

RECUSAL OF THE MASTER BY REASON OF THE JANUARY 3, 1995 (SIC) EX PARTE CONVERSATION BETWEEN SAM PHILLIPS AND JUDGE VOSS

In support of this Objection, Respondent Ernest L. Keathley, Jr., states as follows:

1. Respondent is in receipt of a copy of the January 12, 1996 letter from Sam Phillips to Judge Voss, the Master herein, which letter states, in part:

> Pursuant to my understanding of your directions during our conversation on January 3, 1995 (sic), I have prepared a draft order for your signature. The draft order contemplates denial of Respondent's Request for Additional Hearing.
>
> At your direction, I am also preparing a draft Master's Report in this case. It will be sent to you and Mr. Keathley as soon as it is completed, hopefully within

two weeks.

and covering a document titled "Order Denying Respondent's Request For Additional Hearing", copies of which letter and document are attached hereto.

2. Respondent was not present during, and was not notified of the pendency of said January 3 conversation which was ex parte in nature and thus in violation of Canon 3 A.(4) of Rule 2 --CODE OF JUDICIAL CONDUCT-- of THE MISSOURI SUPREME COURT RULES, which Canon 3 A.(4) provides, in part, as follows:

> A judge should accord to every person who is legally interested in a proceeding and the person's lawyer full right to be heard according to law and, except as authorized by law, ***neither initiate nor consider ex parte . . . communications*** concerning a pending or impending proceeding. (Emphasis added)

3. By reason of said ex parte conversation, the Master's required position of impartiality and required avoidance, under Canon 2 of said Rule 2, of the appearance of impropriety has been compromised and poisoned, and Respondent cannot receive a fair and impartial dispensation of justice in this matter.

WHEREFORE, Respondent moves that the herein complaint against him --by reason of the Master's improper conduct of engaging in an ex parte conversation concerning a decision on the merits and procedures to be followed in deciding the merits of this matter-- be dismissed and that the Master recuse himself from all further activity concerning this Respondent and this matter.

25. Respondent was never served with a copy of the charges and citation against him by an officer authorized by law to serve writs issued by this or any other court, contrary to the provisions and requirement of Section 484.220, VAMS,

thus depriving Respondent of his property rights in his license to practice law in the State of Missouri, contrary to Amendment XIV to the United States Constitution and Article I, Section 10 of the Missouri Constitution.

WHEREFORE, Respondent moves this Court to set aside its November 1, 1996 order of disbarment against this Respondent and reinstate his license to practice law in the State of Missouri, or in the alternative to grant Respondent a hearing of this matter before this Court en banc, with the filing of new briefs on the issues raised herein and following such hearing, to set aside its November 1, 1996 order of disbarment against this Respondent and reinstate his license to practice law in the State of Missouri.

The undersigned attorney certifies that on this 25th day of November, 1996, he mailed by first-class mail, postage prepaid, a copy of the above and foregoing to the following persons:

Sam S. Phillips, Esq.
Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, Missouri
65109

and to

The Honorable Ralph F. Voss
Associate Circuit Judge
Osage County Courthouse
P.O. Box 470
Linn, Missouri
65061

s/Ernest L. Keathley Jr
Ernest L. Keathley, Jr., 16644
Respondent, Pro Se
P.O. Box 963
Florissant, Missouri, 63033
(314) 837-3586; no fax number

APPENDIX F -- LETTER DENYING MOTION FOR REHEARING FOR BEING OUT OF TIME, FILED NOVEMBER 25, 1996

(Great seal of the State of Missouri)
CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

THOMAS F. SIMON
CLERK

TELEPHONE
(573) 751-4144

November 25, 1996

Mr. Ernest L. Keathley, Jr.
P.O. Box 963
Florissant, MO 63033

In re: Ernest L. Keathley, Jr.
Supreme Court No. 77584

Dear Mr. Keathley:

This is to advise that the Court this day entered the following order in the above entitled cause.

"Respondent's motion to set aside disbarment order or in the alternative for hearing on disbarment over-

ruled as out of time."

Very truly yours,
s/ Thomas F. Simon
Clerk

cc. John E. Howe

APPENDIX G -- SUMMONS AND INFORMATION AGAINST, AND MAILED TO PETITIONER FILED DECEMBER 19, 1994

Information, which alleged that:

(Great seal of the State of Missouri)

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

THOMAS F. SIMON — TELEPHONE
CLERK — (573) 751-4144

December 19, 1994

In re: ERNEST KEATHLEY
No. 77584

To: ERNEST KEATHLEY 3795 Greengrass Drive Florissant, MO 63033
or
818 Olive St., Suite 748
St. Louis, MO 63101

SUMMONS

YOU ARE HEREBY NOTIFIED that Nina Balsam, Chairperson of Division III,

of the Circuit Bar Committee for the 22nd Judi(--ial. Circuit, have filed an Information with this Court alleging that you have been guilty of certain misconduct in your professional capacity, a copy of which Information is hereto attached.

YOU ARE FURTHER NOTIFIED that pursuant to Supreme Court Rule 5.18, you are required to file an Answer to said Information on or before January 18, 1995, on filing of which this Court shall proceed to hear this cause or shall refer the matter to a Master appointed by this Court.

IN WITNESS WHEREOF, I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, have hereunto set my hand and affixed the Seal of said Court at my office in the City of Jefferson, Missouri, this 19th day of December, 1994.

s/Thomas R. Simon
Clerk, Supreme Court

s/by Mary Elizabeth McHaney
Deputy Clerk, Court en banc

0177594

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE: ERNEST KEATHLEY, Respondent.
Committee File No.
93-342-16644-11649-22

INFORMATION

Division Three of the Circuit Bar Committee of the 22nd Judicial Circuit, pursuant to Supreme Court Rule 5.12 charges that the Respondent Ernest Keathley, Jr., who is an attorney licensed to practice law in Missouri, violated the Rules of Professional Conduct (Missouri Supreme Court Rule 4), as follows:

1. Mr. Keathley represented Sharon Adkins and obtained a judgment in her favor against Charles Gross on November 21, 1975. Respondent thereafter proceeded to run approximately eighteen garnishments against the judgment debtor to collect upon that judgment, but failed to keep Sharon Adkins reasonably informed about the status of this matter and failed to promptly comply with her requests for

information, in violation of Rule 1.4(a).

2. In addition, Respondent violated Rule 1. 15(b) by receiving funds through garnishment and not forwarding those funds or the appropriate portion of those funds on to Complainant Sharon Adkins.

3. Finally, Respondent has violated Rule 8. 1 (b) by knowingly failing to respond to demands for information form the Bar Committee of the Twenty-Second Judicial Circuit regarding the Complaint of Sharon Adkins.

Having investigated the matters alleged in the above Information, probable cause has been found to believe that the facts stated in the Information are true, according to the best information, knowledge and belief of the undersigned.

BAR COMMITTEE OF THE
22ND JUDICIAL CIRCUIT
s/Nina Balsam
Ms. Nina Balsam
Chairperson, Division

DATED:
W/11/19/94

Three
Circuit Bar Committee of
the Twenty-Second
Judicial Circuit

STATE OF MISSOURI, CITY OF ST. LOUIS, ss. Before me personally appeared Nina Balsam and executed the above and foregoing Information as her free act and deed this 18th day of November, 1994.

s/Marsha A Griffin
NOTARY PUBLIC

My Commission Expires:
MARSHA A. GRIFFIN
NOTARY PUBLIC, STATE OF MISSOURI
ST. LOUIS CITY
MY COMMISSION EXP. JAN. 29,1995

APPENDIX H -- AMENDED INFORMATION AGAINST PETITIONER FILED NOVEMBER 14, 1995

IN THE SUPREME COURT OF THE STATE OF MISSOURI
EN BANC
IN RE: ERNEST L. KEATHLEY, JR., 77584
Supreme Court Number 77584

AMENDED INFORMATION

Informant, Chief Disciplinary Counsel, charges Respondent, Ernest L. Keathley, Jr., under Missouri Supreme Court Rule 5, with violation of the Rules of Professional Conduct, Missouri Supreme Court Rule 4, in the following manner:

1. Beginning in 1975, Respondent represented Sharon Adkins in her efforts to collect a $3,000.00 St. Louis County Circuit Court judgment against Charles Gross.

2. From 1976 until 1992, Respondent caused approximately 17 garnishments of Charles Gross' wages from Gross' employer, Monsanto Corporation.

3. Respondent failed to adequately communicate with Sharon Adkins about his efforts and successes in obtaining garnishment proceeds, and failed to inform her upon receipt of the proceeds, in violation of Rule 1.4 and 1.15(b).

4. Upon receipt of client funds after the garnishments, Respondent failed to keep those funds which belonged to Sharon Adkins separate from his own funds, and failed to keep and maintain adequate records of the garnishment proceeds, in violation of Rule of Professional Conduct 1. 15(a).

5. On several occasions, upon receipt of the garnishment proceeds, Respondent failed to promptly notify Ms. Adkins, and he failed to promptly deliver her portion of the proceeds to her, in violation of Rule of Professional Conduct 1.15(b).

6. During a period from April, 1980 until August, 1987, Respondent made only one effort to garnish the wages of Charles Gross. He conse-

quently violated Rule of Professional Conduct 1.3 by failing to act with reasonable diligence and promptness in representing Ms. Adkins' interest in collecting the judgment.

7. Respondent failed to respond to lawful demands for information made by investigators from the Twenty-Second Judicial Circuit Bar Committee. The investigator requested information about Respondent's representation of Sharon Adkins. Respondent thereby violated Rule of Professional Conduct 8.1(b).

WHEREFORE, under Rule 5.21, upon review of the probable cause findings of the Circuit Bar Committee, and upon Respondent's failure to appear at the Advisory Committee, and upon investigation of the matters alleged, Informant asks the Court to find, after receiving evidence, that Respondent violated the Rules of Professional Conduct as alleged in this Amended Information, and to discipline the Respondent in accordance with Rule 5.21.

Respectfully submitted,
JOHN E. HOWE #22615

CHIEF DISCIPLINARY COUNSEL
By: s/Sam S. Phillips
SAM S. PHILLIPS #30458
3335 American Avenue
Jefferson City,
Missouri 65109
Phone: (314) 635-7400
ATTORNEY FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by first class mail, postage prepaid, this /14th day of November, 1995, to:

The Honorable Ralph F. Voss,
Associate Circuit Judge, P.O. Box 470
Linn, MO 65051-0470

Ernest L. Keathley, Jr. P.O. Box 963
Florissant, MO 63033

s/Sam S. Phillips
SAM S. PHILLIPS

APPENDIX I --
VERNON'S ANNOTATED MISSOURI RULES, RULES OF CIVIL PROCEDURE -- MOTIONS FOR REHEARING

RULE 84. PROCEDURE IN ALL APPELLATE COURTS -- (1996 Pocket Part)

84.17. Motions for Rehearing
< Text effective until January 1, 1997 >

A motion for rehearing shall briefly and distinctly state the grounds upon which a rehearing is sought. It may be accompanied by suggestions in support containing citations of authorities. **The motion shall be filed within fifteen days after the opinion of the court is filed**, and the motion and suggestions shall be served on the adverse party within that time. If a motion is overruled, no further motion by the same party for rehearing or to set aside the order overruling the motion for rehearing may be filed. (Emphasis added)

The purpose of a motion for rehearing is to call attention to mate-

rial matters of law or fact overlooked or misinterpreted by the court, as shown by its opinion. Re-argument of issues determined by the opinion will be disregarded.

Suggestions in opposition to a motion for rehearing may be filed within seven days after the expiration of the time for the filing of the motion, and a copy of the suggestions shall be served on the adverse party within that time.

APPENDIX -- J
Rule 4-1.4 -- COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

APPENDIX -- K
RULE 4.15 -- SAFEKEEPING PROPERTY

Rule 4-1.15

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by

agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the court (sic) of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) Except as provided in paragraph (e), a lawyer or law firm shall establish and maintain one or more interest-bearing insured depository accounts into which shall be deposited all funds of

clients or third persons that are nominal in amount or are expected to be held for a short period of time, but only in compliance with the following provisions:

(1) no earnings from such account shall be made available to the lawyer or law firm, and the lawyer or law firm shall have no right or claim to such earnings;

(2) only funds of clients that are nominal in amount or are expected to be held for a short period of time and on which interest is not paid to the clients may be deposited in such account, taking into consideration the following factors:

(i) the amount of interest that the funds would earn during the period they are expected to be deposited:

(ii) the cost of establishing and administering the account, including the cost

of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients;

(3) funds deposited in such account shall be available for withdrawal or transfer on demand, subject only to any notice period that the institution is required to observe by law or regulation;

(4) the depository institution shall be directed by the lawyer or law firm establishing such accounts:

(i) to remit at least quarter-annually earnings from such account, net of any service charges or fees as computed in accordance with the institution's standard accounting practice, to

the Missouri Lawyer Trust Account Foundation, which shall be the sole beneficial owner of the interest or earnings generated by such account; and

(ii) to transmit with each remittance of earnings a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied, with a copy of such statement to such lawyer **or** law firm; and

(5) the lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstances require further action with respect to the funds of any client.

(e) Every lawyer shall certify, in connection with this Court's annual enrollment fee statement and in such form as the clerk of this Court may prescribe, that the lawyer or the law firm with

which the lawyer is associated either participates in the program as provided in Rule 1.15(d) or is exempt because the:

(1) Nature of the lawyer's or law firm's practice is such that the lawyer or law firm does not hold client or third party funds or is not required to maintain a trust account; or

(2) lawyer is primarily engaged in the practice of law in another jurisdiction and not regularly engaged in the practice of law in this state;

(3) lawyer is associated in a law firm with at least one lawyer who is admitted to practice in a jurisdiction other than the state of Missouri and the lawyer or law firm maintains a pooled interest-bearing trust account for the deposit of funds of clients or third persons in a financial institution lo-

cated outside the state of Missouri and the interest, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds or to a non-profit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located;

(4) lawyer or law firm elects to decline to maintain accounts as described in paragraph (d) in accordance with the procedures set forth in paragraph (f); or

(5) Missouri Lawyer Trust Account Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the program when service charges on the lawyer's or law firm's trust account equals or exceeds any interest generated.

(f) A lawyer or law firm may elect to decline to maintain accounts as described in paragraph (d) for any calendar year by so notifying the Missouri Lawyer Trust Account Foundation in writing on or before January 31 of 1991 and each subsequent year. A lawyer or law firm that does not so advise the Missouri Lawyer Trust Account Foundation within any such period shall be required during the current year to maintain such accounts.

(g) For purposes of paragraph (d) of this rule:

(1) "insured depository accounts" shall mean government insured accounts at a regulated financial institution on which withdrawals or transfers can be made on demand, subject only to any notice period that the institution is required to observe by law or regulation.

(2) The Missouri Lawyer Trust Ac-

count Foundation is that not-for-profit corporation described in this Court's Order of October 23, 1984.

(Amended March 9, 1990, effective July 1, 1990; March 3, 1994, effective July 1, 1994.)

APPENDIX L -- ARTICLE V, SECTION 25(a) and (d), MISSOURI CONSTITUTION - NONPARTISAN SELECTION OF JUDGES - NONPARTISAN JUDICIAL COMMISSIONS - NUMBER, QUALIFICATION, SELECTION AND TERMS OF MEMBERS - MAJORITY RULE - REIMBURSEMENT OF EXPENSES - RULES OF SUPREME COURT.

(a) Whenever a vacancy shall occur in the office of judge of . . . (t)he supreme court, . . . the governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided. If the governor fails to appoint any of the nominees within sixty days after the list of nominees is submitted, the nonpartisan judicial commission making the nomination shall appoint one of the nominees to fill the vacancy.

(d) Nonpartisan judicial commissions whose duties it shall be to nominate and submit to the governor names of persons for appointment as provided

by Sections 25(a)-(g) are hereby established and shall be organized on the following bases: For vacancies in the office of judge of the supreme court or of the court of appeals, there shall be one such commission, to be known as "The Appellate Judicial Commission"; . . . the appellate judicial commission shall consist of a judge of the supreme court selected by the members of the supreme court, and the remaining members shall be chosen in the following manner: The members of the bar of this state residing in each court of appeals district shall elect one of their number to serve as a member of said commission, and the governor shall appoint one citizen, not a member of the bar, from among the residents of each court of appeals district, to serve as a member of said commission, and the members of the commission shall select one of their number to serve as chairman. * * * the terms of office of the members of such commission shall be fixed by law, but no law shall increase or diminish the term of any then in office. No member of any such commission other than a judge shall hold any public office,

and no member shall hold any official position in a political party. Every such commission may act only by the concurrence of a majority of its members. The members of such commission shall receive no salary or other compensation for their services, but they shall receive their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties. All such commissions shall be administered, and all elections provided for under this section shall be held and regulated, under such rules as the supreme court shall promulgate.

APPENDIX - M
VAMS 484.220
CITATION AND CHARGES, HOW SERVED

484.220.

The copy of the charges and citation may be served upon the accused by any officer authorized by law to serve writs issued by such court and in any county of this state, and if the accused be not found in this state then reasonable notice shall be given him by publication in such manner as the court may direct, unless served as provided in section 484.210, supra.

APPENDIX - N
RULE 44.01. TIME, COMPUTATION OF-- ADDITIONAL TIME AFTER SERVICE BY MAIL.

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(e) **Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the

party and the notice or paper is served by mail, three days shall be added to the prescribed period.

((e) Was amended Sept. 28, 1993, effective Jan. 1, 1994.)

APPENDIX O
RULES 5.05, 5.07(A), AND 5.12 CHIEF DISCIPLINARY COUNSEL, INVESTIGATIONS AND HEARINGS - JURISDICTION, REQUEST FOR HEARING - FILING- DUTY OF CHIEF DISCIPLINARY COUNSEL

RULE 5.05 - CHIEF DISCIPLINARY COUNSEL

This Court shall appoint a "Chief Disciplinary Counsel" who shall serve at the pleasure of the Court. * * * The chief disciplinary counsel or the counsel's designated assistants shall serve as counsel for the bar in all disciplinary proceedings and shall conduct necessary investigations as provided in this Rule 5. The compensation of the chief disciplinary counsel shall be fixed by this Court.

RULE 5.07 - INVESTIGATIONS AND HEARINGS - JURISDICTION

(a) The chief disciplinary counsel has the power with or without complaint, to investigate any matter of professional misconduct. * * *

RULE 5.12 - REQUEST FOR HEARING - FILING- DUTY OF CHIEF DISCIPLINARY COUNSEL * * *

* * * The advisory committee shall notify the chief disciplinary counsel of the committee designated to conduct the hearing. The chief disciplinary counsel or the counsel's designee shall enter an appearance before the designated committee and shall be responsible for all further conduct of the matter before the designated committee and the Court.* * *

APPENDIX P

RULE 5.25(c)

In every case in which a lawyer is disbarred or suspended, within thirty days from the date of the disbarment or suspension the lawyer shall:

* * *

(c) In the absence of co-counsel notify all clients to make arrangements for other representation, calling attention to any urgency in seeking the substitution of another lawyer;